



THE SENATE COMMITTEE ON  
VETERAN AFFAIRS & MILITARY INSTALLATIONS

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GOVERNMENTAL INQUIRY  
UNIT

March 23, 1998

The Honorable Dan Morales  
Attorney General  
State of Texas  
P. O. Box 12548  
Austin, Texas 78711-2548

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**RE: REQUEST FOR OPINION**

Opinion Committee  
**FILE #** ML-40207-98  
**I.D. #** 40207

Dear Attorney General Morales:

As chairman of the Senate Veteran Affairs and Military Installations Committee, I am asking for your opinion with respect to the regulation of unsafe mobile homes and manufactured housing.

Under V.A.C.S § 5221(f), TDED regulates to some extent mobile homes and manufactured housing. It appears that TDED's regulatory power is in standards for construction and installation of manufactured housing and habitability of such housing only when it is sold, exchanged or leased with an option to purchase.

Section 5221(f), § 9(m) does appear to give authority to TDED to establish rules and regulations to protect "consumers who occupy" manufactured housing; TDED has apparently not promulgated any such rules or regulations affecting unoccupied, unsafe mobile homes or manufactured housing.

TDED, formerly TDHCA, responded to communications by the City of Nacogdoches by letter of March 31, 1997, a copy of which is attached. The substance of the letter is that TDHCA had no "rules or regulations which affect unoccupied and unsafe manufactured housing or mobile homes, nor does TDHCA intend to seek legislation to authorize it or other entities to regulate and remove unsafe, unoccupied mobile homes or manufactured housing".

It further concluded that city "pursuit to establish minimum safety standards for unoccupied and unsafe manufactured housing would not interfere with any authority TDHCA currently has in its regulation of mobile homes and manufactured housing".

Home Rule cities have full power of local self government as provided in L.G.C § 51.072. Generally, a Home Rule city may exercise any power not prohibited by the Constitution or laws of the State of Texas, which is lawfully conferred by its charter. Bland v. City of Taylor, 37SW2d291, (Tex. Civ. App.-Austin 1931) affirmed 67SW2d1033, (Tex. 1934). The Charter of the City of Nacogdoches provides for regulation of nuisances (Article II, § 22(1) and (19)), for the condemnation of dangerous or dilapidated structures which are calculated to increase the fire hazard. L.G.C. § 214 allows for, among other remedies, the securing, removal, repair or demolition of substandard structures, by municipalities.

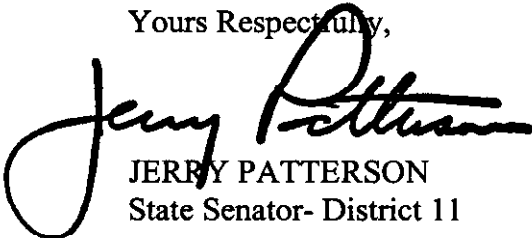
TDED states it has not occupied the field of regulation of unsafe mobile homes and manufactured housing and cities do not appear to be preempted from such regulation.

Additionally, there are related questions remaining. What standards are to be used to determine whether a mobile home or manufactured housing is substandard or unsafe? TDED requires that such housing be built to HUD code standards while most municipalities subscribe to other standard codes dealing with conventional structures. It would appear that HUD code standards would be required to be used to determine whether the mobile home or manufactured housing was unsafe or substandard, but HUD has no specific standards establishing substandard conditions.

Since mobile homes and manufactured housing are titled, how does a city obtain title to them? Suggestions of reliance on tax foreclosures due to delinquent ad valorem real property tax foreclosure sales are impractical. Is a municipal demolition lien established by ordinance recognized as something forecloseable to TDED in order to obtain a "repossession title"?

Please feel free to call upon the City of Nacogdoches for any assistance in this matter.

Yours Respectfully,

A handwritten signature in black ink, appearing to read "Jerry Patterson", is written over the typed name and title.

JERRY PATTERSON  
State Senator- District 11

JP/jl

Attachment

cc: Rob Atherton, City Attorney, City of Nacogdoches



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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EXECUTIVE DIRECTOR

March 31, 1997

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Mr. Rob Atherton  
City Attorney  
City of Nacogdoches  
P.O. Drawer 631248  
Nacogdoches, TX 75963-1248

Re: Unsafe Mobile Homes and Manufactured Housing

Dear Mr. Atherton:

I am in receipt of your letter to the Manufactured Home Division of Texas Department of Housing and Community Affairs ("TDHCA") dated January 23, 1997 regarding the referenced matter. You have requested guidance from TDHCA pertaining to the City of Nacogdoches' concern of the possible threat to the health and welfare of the public due to the existence of unoccupied and substandard mobile homes and manufactured housing.

As you are aware, Tex. Rev. Civ. Stat. Ann. art 5221(f) (Vernon 1995) regulates manufactured housing as it relates to the construction and installation of same. However, TDHCA does not have any rules or regulations which affect unoccupied and unsafe manufactured housing or mobile homes, nor does TDHCA intend to seek legislation to authorize it or other entities to regulate and remove unsafe, unoccupied mobile homes or manufactured housing.

Therefore, the City of Nacogdoches pursuit to establish minimum safety standards for unoccupied and unsafe manufactured housing would not interfere with any authority TDHCA currently has in its regulation of mobile homes and manufactured housing. At the same time, TDHCA encourages the City to seek an opinion from the Attorney General's office because of the need to resolve the issue definitively.

Sincerely,

Ann Denman  
Staff Attorney

c: Ed Blankenship

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